

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>RONALD WARNE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Civil Action No. 07-832-JJF</b>
	)	
<b>HOME OF MERCIFUL REST SOCIETY,</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>INC., d/b/a KENTMERE NURSING</b>	)	
<b>CARE CENTER,</b>	)	
	)	
<b>Defendant.</b>	)	

**MOTION OF DEFENDANT HOME OF MERCIFUL REST SOCIETY INC.,  
d/b/a KENTMERE NURSING CARE CENTER, TO DISMISS FOR  
FAILURE TO PROSECUTE**

Defendant Home of Merciful Rest Society Inc., d/b/a Kentmere Nursing Care Center ["Kentmere Nursing Care Center"], by and through its undersigned counsel, hereby moves this Honorable Court to enter the attached Order, dismissing this case pursuant to D. Del. LR 41.1 for failure to prosecute, and in support thereof, respectfully avers as follows:

1. Plaintiff filed a Complaint on December 19, 2007, naming Kentmere Nursing Care Center as Defendant in this lawsuit. D.I. 1.

2. Plaintiff's Complaint purports to allege various counts under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, the Americans with Disabilities Act, 42 U.S. C. § 12101 *et seq.*, and Title VII, 42 U.S.C. § 2000e-1 *et seq.*

3. On February 18, 2008, defense counsel<sup>1</sup> filed a Motion To Dismiss in Part Plaintiff's Complaint, D.I. 3. Defendant's Opening Brief in support of the Motion was also filed on February 18, 2008, D.I. 5.

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<sup>1</sup>. Defendant at this stage of the case was represented by the law firm of Morris James LLP, and later substituted Marshall, Dennehey, Warner, Coleman & Goggin as counsel.

4. Under D. Del. LR 7.1.2 setting forth the format and schedule for filing responses to Motions and Opening Briefs, Plaintiff's Answer Brief was due on March 3, 2008, 10 business days from the date of filing of Defendant's Motion and Opening Brief filed on February 18, 2008.

5. As of the date of this filing, May 21, 2008, Plaintiff has not filed any response or any papers whatsoever with the Court.

6. D. Del. LR 41.1 provides as follows:

Subject to the provisions of Fed. R. Civ. P. 23 and 23.1, in each case pending wherein no action has been taken for a period of 3 months, the Court may, on its motion or upon application of any party, and after reasonable notice and opportunity to be heard, enter an order dismissing such case unless good reason for the inaction is given. After any such application or notice from the Court, no application for a continuance or any proceeding taken under the discovery rules shall be deemed to toll the operation of this Rule.

7. At this juncture, despite the Plaintiff's obligation to file responsive papers and pursue his defense, there has been no action taken in this case for over three months and the litigation is ripe for dismissal within the purview of D. Del. LR 41.1.

WHEREFORE, defendant Kentmere Nursing Care Center respectfully moves this Honorable Court to enter the attached Order dismissing this action pursuant to D. Del. LR 41.1.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: /s/ Judith M. Kinney  
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Attorney for Defendant Home of Merciful  
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Care Center

Dated: May 21, 2008  
15/623152.v2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

RONALD WARNE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 07-832-JJF
	)	
HOME OF MERCIFUL REST SOCIETY,	)	JURY TRIAL DEMANDED
INC., d/b/a KENTMERE NURSING	)	
CARE CENTER,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

Judith M. Kinney, Esquire, hereby certifies that on May 21, 2008, she caused true and correct copies of the *Motion of Defendant, Home of Merciful Rest Society, Inc., d/b/a Kentmere Nursing Care Center, to Dismiss for Failure to Prosecute* to be served upon the following person via e-filing and U.S. Mail, postage prepaid:

Herbert G. Feuerhake, Esquire  
Herbert G. Feuerhake  
521 West Street  
Wilmington, DE 19801

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

/s/ Judith M. Kinney DE ID No. 3643

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Date: May 21, 2008

*Counsel for Defendant Home of Merciful Rest  
Society, d/b/a Kentmere Nursing Care Center*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**RONALD WARNE,**

**Plaintiff,**

**VS.**

**HOME OF MERCIFUL REST SOCIETY,) INC., d/b/a KENTMERE NURSING ) CARE CENTER, )**

**Defendant.**

**Civil Action No. 07-832-JJF**

## JURY TRIAL DEMANDED

## ORDER

And now, on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, having considered Defendant's Motion to Dismiss for Failure to Prosecute, and the response thereto,

IT IS ORDERED THAT Defendant Home of Merciful Rest Society Inc., d/b/a Kentmere Nursing Care Center's Motion to Dismiss for Failure to Prosecute is GRANTED, and all claims in Plaintiff's Complaint are hereby dismissed with prejudice pursuant to D. Del. LR 41.1 and judgment is entered in favor of Defendant.

Joseph J. Farnan, U.S. District Judge